G. R. S. IX-5]

Previous references.

Legislation 2/1863.

1880

~~191~~ .

(Police)

File No. 5

Serial Nos. 1–4

Later references.

(11)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 154.

Alb. ~~Part~~ B for March 1881

SUBJECT.

Punishment of whipping in Jupore.

W D 88—GPB—50,000—24-7-16

Docket.

1880

No 432-

From C

Coorg No. 473 C

Police Statistics, Revenue & Agriculture

3-80

1

of 2 Sept 1880

No 15/1059 dated 17 Sept 1880

Encls: 4 of letter & 4 of enclosures to the same

Requests to be furnished with a full report as to the circumstances under which the punishment of whipping is inflicted and also with an expression of opinion as to its modification or continuance.

To Mysore Comr.

Forwards copy of an application for an expenditure in this province together with the usual statistical returns that is called for by the Govt of India

Draft

7.10.80.

Issued in Coorg Office on 14.10.80

The above order was carried out in the Sec. Dept and the Judl. Comr of Mysore only addressed.

A similar draft /Hasi/ is sent to for Coorg.

15.10.80

No. 15
1053

FROM

THE HONOURABLE C. GRANT, C.S.,

Offg. Secretary to the Government of India,

To

The Chief Commissioner
of Coorg.

Home, Revenue and
Agricultural Department.
Judicial.

SIMLA, the 24 September 1880.

SIR,

I AM directed to forward the accompanying copy of a despatch* from Her Majesty's Secretary of State for India, with annexures, relative to two questions asked in the House of Commons, *viz.*, (i) in regard to the large number of sentences in which the punishment of whipping was inflicted in India in 1878, and (ii) in regard to the necessity for the retention of the punishment of whipping in the Indian dominions of Her Majesty.

* No. 14 (Judicial), dated the 29th July 1880.

2. I am to request that, ——————————

you will be good enough to furnish the Government of India with a full report as to the circumstances under which the punishment of whipping is inflicted, and also with an expression of your opinion ——————————
—————————— as to its modification or continuance.

3. I am to add that the Government of India will also be glad to receive a copy of any instructions issued by you ——————————
for the guidance of Judicial Officers in the exercise of their discretion under the Whipping Act, together with statistics for the past five years showing the offences for which whipping has been inflicted.

I have the honour to be,

SIR,

Your most obedient Servant,

Grant

Offg. Secretary to the Government of India.

C. G. B. Press, Simla.—No. 623 H., R. & A. D.—23-9-80.—210.

3 weeks 68/1

No. 14 (Judicial), dated India Office, London, the 29th July 1880.

From—Her Majesty's Secretary of State for India,

To—The Government of India.

IT attention has been called on two occasions by questions in the House of Commons to the large number of sentences in which the punishment of whipping was inflicted in India in the year 1878, and to the question of the necessity for its retention in the Indian dominions of Her Majesty.

2. I forward herewith extracts from the *Times* newspaper of the 28th of June and of the 2nd July, containing reports of questions put to me in the House of Commons and of my replies, which are sufficiently, though not absolutely, accurate.

3. I desire that Your Lordship will give your consideration in Council to this subject, and will furnish me with the information which I undertook to obtain, together with your opinion upon the questions which have thus been raised.

Extract from the *Times* Newspaper dated 29th June 1880.

FLOGGING IN INDIA.

Mr. Thompson asked the Secretary of State for India whether he would lay upon the table a return of the offences for which 72,650 of our Indian fellow-subjects were punished with flogging in the year 1877.

The Marquis of Hartington.—Whipping was awarded, in addition to other punishment, to 6,203 persons; in lieu of other punishment, to 66,447, of whom 28,127 were sentenced in the Madras Presidency. The return asked for cannot be given, because the judicial statistics do not classify the punishments under the offences, but merely give separately the totals of the various offences and the totals of the various punishments. The required information is, however, contained in the Act VI of 1861, which will be found in the Library of the House of Commons. The chief provisions of that law are as follow:—For theft, receiving stolen property, housebreaking and extortion, the offenders may, at the discretion of the judge or magistrate, be punished with whipping in lieu of any punishment to which he may be liable under the Penal Code. On a second conviction for the above offences, the offender may be whipped in lieu of, or in addition to, other punishment. On a second conviction for false evidence, false accusation, criminal assaults on women, indecent offences, robbery or dacoity, forgery and habitually dealing in stolen property the offender may be whipped in addition to other punishment. For any offence a juvenile offender may be whipped in lieu of any punishment except death. No female is to be punished by whipping. First class magistrates only are empowered to sentence to whipping. Whipping is to be inflicted with due regard to the health of the offender, and, if practicable, in presence of a medical man. It may be observed that the punishment is termed by the law whipping, not flogging. The reason why so many sentences of whipping were passed during the year 1877 was that, owing to distress among the people, petty crimes increased greatly, and the magistrates exercised largely their discretionary power of inflicting whipping instead of fine and imprisonment. If a sentence of fine was passed, it would have been equivalent to imprisonment, as people in distress could not pay, and must have gone to prison in default. And the prisons were so crowded, and the rate of mortality so high in them, that a sentence of imprisonment carried with it serious risk to life.

Mr. A. Sullivan asked whether the Noble Marquis could inform the House exactly what the distinction was between flogging and whipping; secondly, whether people in an emaciated condition were fit subjects for flogging; and, thirdly, whether, considering what had been done in this country, the Government would take steps to abolish the lash in India. (Hear.)

The Marquis of Hartington.—Perhaps the Hon'ble Member would give notice of his question. (Hear.) I may say, however, that I have inquired, but have not been able to obtain as yet a satisfactory answer, as to the precise dis-

4

tinction between whipping and flogging. But the punishment in India is not inflicted with the "cat," and is a much milder punishment than what is known as flogging in this country. (Hear, hear.)

Extract from the *Times* Newspaper dated 2nd July 1880.

PUNISHMENTS IN INDIA.

Mr. A. M. Sullivan asked the Secretary of State for India whether, considering the contemplated abolition of flogging in Her Majesty's naval and military services, the Government would take any, and what, measures to abolish punishment by the lash or bamboo among Her Majesty's Indian subjects.

The Marquis of Hartington.—In answer to the question the Hon'ble and Learned Member gave notice of the other day, and which does not appear on the paper, I may state that I have made inquiries, and find that corporal punishments in India are inflicted under different regulations in the different provinces. As far as I am able to ascertain, the punishment is usually inflicted, not with a "cat-o'-nine-tails" but with a light cane; certainly in all cases of juvenile offenders that is so, and even when the punishment is inflicted on adults, it is of a very mild and light description. So much in answer to the general question of the Hon'ble Member. I may say that the experiment of discontinuing the punishment was tried on several occasions, both partially and in the whole of India. From 1862 to 1864 the punishment was not inflicted. During that time complaints were made by all the local Governments of the difficulty experienced in the interval. It has not been, therefore, continued or adopted by the Government of India without full consideration. Among the considerations which have rendered that necessary was the difficulty of inflicting any other punishment in a tropical climate. Penal servitude and solitary or separate confinement were impossible, owing to the mortality which occurred being very high in crowded gaols among prisoners who had been accustomed to spend almost their whole lives in the open air. It would be impossible to take any hasty or precipitate step in this matter. All I can undertake to do is to call for full reports from the Government of India and the Local Governments as to the circumstances in which the punishment is inflicted, and ask their opinion either as to its modification or continuance. (Hear, hear.)

4
W97

(General Serial No. 31.) 5 No 123

188 0

From Police
3-80

To The Jud. Commr.
Mysore

Dated 7th October. 1880
Rec'd
Despatched 8th

Received

Enclosures No. One

General No. 4940
J No. 96

I forwards copy of
Govt of India Home
Rev. and Agricultural
Depart No 157/105-9 dy
24 September 1880 relat
to the punishment by
whipping and requests an
expression of his opinion
together with the informat
statistical and other
that is called for by the
Govt of India.

I &c
Sd
Secy

7.10.80

Mr J.C. says W77 opportunity might be taken to republish the existing rule as to mode of inflection.

What is the rule referred to published? Yes

21/2

No rules have been published since the publication of the Law Act but instructions issued from time to time for the guidance of the Magistracy are put up -

Please see Judl Comrs Cir: Re 1275/5-4 dated 1st October 1867 in Law Manual - page 355 and Cir: Re 11 of 2nd August 1875 Criminal side.

A.R.P

23-2-81. Replies that the Understg Fr. Dept in Cct 44 d 21 May 64 has laid down that the size of the rattan as not exceeding 4 feet in length or ½ an inch in diameter. With J.C. this considers sufficient. Rules necessary. Cct to issue a draft suggesting the

(General Serial No. 29.) 336 6

1880-81.

From The Judl Commissioner of Mysore.

To

The Secretary to the Chief Commissioner of Mysore, General Department.

No 5470

Dated Bangalore the 3 Feb: 1881.

Despatched 6th

Received 6th — " —

Enclosures No. 1.

General No. 2780 } 18 -8.
No. 265.

Memorandum enclosing copy of letter No 276 of the 22nd November 1880, from the Dist: Judge Nagar Dn and Comrs certain suggestions in regard to the adoption of some fixed standard for the size of the instrument used in whipping.

The size of the Rattan is limited to 4 ft in length & ½ an inch in diameter by Foreign No. 44 d 21 May 1864 Copy forwarded to J.C. on 6 June 64 No 500/70.

Not in file Yes 19.2

A magte on journey in Canara cannot conveniently carry triangles with him & therefore when anyone is ordered by a cart sheet Yes

No. 2780
265.

Bangalore 14th Febry 1881

From

J. D. Sandford Esqre
Judicial Commissioner
of Mysore

To

The Secretary to the
Chief Commissioner
of Mysore
General Department

Sir,

I have the honor to forward for the orders of the Chief Commissioner extract para 5 of letter No. 216 of the 22d November 1880 from the District Judge Nagar Division, recommending the adoption of some fixed standard for the size of the instrument used in whipping and that its thickness should not exceed 1/4 of an inch or at the most 3/8ths.

2. I agree that it would be useful if the Local Government were to pass a Rule on the subject under Section 311 Criminal Procedure Code.

Code: and opportunity might be taken to Re-publish the existing Rule as the mode of punishment and part of the person on which the punishment is inflicted: and strictly to enjoin the use of a triangle so constructed that the front part of the person shall not be protected.

I have the honor to be
Sir
Your most Obed[t] Servant

Wm Ford
Judicial Commissioner

P.S.

Extract para 5 of letter No. 216 of the 22d November 1880 from the District and Sessions Judge Nagar Division.

5. The instrument used for whipping is a light Rattan, as prescribed in the instructions to which your Office Circular No. 17 of 28th June 1864 gave cover. The size i.e. the thickness of the Rattan is not always the same I presume, for though the District Magistrate of Shimoga describes the Rattan ordinarily in use in his District, as of "the thickness of an Office black lead pencil" (vide para 4 of the Judicial Commissioners letter marginally noted) and the District Magistrate of Kadur describes the instrument in use as a short light Rattan" of about 1/4 of an inch in thickness, the canes used at the jail here are, as now ascertained by measurement, from 3/8th of an inch to 5/16th of an inch in thickness, and 3ft 1" to 3ft 5" in length. I need hardly add that the severity of a whipping must largely differ according to the thickness of the cane used, and I would recommend that this should not be allowed to exceed 1/4 of an inch, or at the most 3/8th.

No. 316 of 5th April 64 addressed to Secy. to Chief Commr. of Mysore.

I still more Accd with the length

Extract"

S. Hanceyee Asst
Registrar

1/1897

(General Serial No. 31.) 10

1881

From No. 240.
Police
3—do
4

To The Judicial Commissioner

Dated Bangalore 10th March 1881
Despatched
Received

Enclosures No.

General No. 8427
J No. 242

Ref. letter No. 2780
265
dated 30th 23rd February 1881,
making certain suggestions
in regard to the sign of
instrument used in
whipping.

In reply, state that the
Government of India
have in Foreign Dept
letter No. 44 dated 21st
May 1864, communicated

to the Judicial Commissioners
in their office No. 600/70 &
dated 6th June 1864),
laid down the size of the
pattern as not exceeding
4 feet in length ~~and~~ or
½ an inch in diameter.
If the Judicial Commissioners
still consider a set of
rules necessary, the
Chief Commissioner will be
glad to receive a draft
suggesting them.

"By Order

Secretary

Kept in the file.

10/3/81